IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.552 of 2001

Decided on : March 10, 2009

Sarvan Kumar

... Petitioner

VERSUS

The State of Haryana

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.I.P.Singh,
Advocate for the petitioner.

Ms.Rajat Goyal, Assistant Advocate General
Haryana.

A.N.JINDAL, J.-

This revision petition is directed against the judgment dated 15.3.2001 passed by Additional Sessions Judge, Sirsa, dismissing the appeal of petitioner Sarvan Kumar (herein referred as `petitioner') against the judgment dated 21.8.1998 passed by Chief Judicial Magistrate, Sirsa, convicting him under Section 16(1)(a)(i) read with Section 7 of the Food Adulteration Act, 1954 (for short `the Act'). However, in appeal, the sentence of imprisonment awarded by the Trial court was reduced to six months, without any alteration in the sentence of fine.

A brief resume of facts is that on 30.12.1994 Food Inspector Prithi Singh along with Dr.RP Dahiya inspected the premises of the petitioner at DC Colony, Sirsa and found him in possession of 40 kg of dal `Mungi Dhuli' (a kind of pulses) for public sale contained in a bag. The Food Inspector after disclosing his identity and giving a notice (Ex.PA) to the petitioner, purchased 600 grams of the Dal and made it uniform. Then, it was divided into three dry clean and empty bottles which were labelled and sealed as required under the Rules. Food Inspector also prepared a spot memo (Ex.PC) and delivered on copy of Form VII to the petitioner. One sealed bottle along with memorandum of form VII was sent to Public Analyst, Haryana, Chandigarh for analysis. On analysis, the Public Analyst vide his report dated 30.1.1995 (Ex.PG) opined that the sample was coloured with added prohibited yellow (metanil Yellow) acid coaltar dye, whereas, it should have been free from the same. Consequently, the complaint (Ex.PH) was filed.

The Trial Court tried the complaint as a warrant case, recorded the pre-charge evidence and then framed the charge under Section 16(1)(a)(i) read with Section 7 of the Act, to which the petitioner pleaded not guilty and claimed trial.

After framing the charge, the Trial court examined Dr.Ramesh Kumar as PW3, in addition to the witnesses already examined, who were also recalled for re-examination.

In his statement under Section 313 of the Code of Criminal Procedure, the petitioner denied all the allegations and pleaded his false implication. He examined Prem Iqbal (DW1) to prove that the shop in

question belonged to Nand and Madan and did not belong to him. The trial ended in conviction. The appeal was also dismissed with some modification in the quantum of sentence, as referred to above.

Arguments heard. Records perused.

At the very outset, counsel for the petitioner has not assailed the order of conviction, however, he harped for some leniency in the quantum of sentence.

The occurrence took place way back on 30.11.1994 and the petitioner has already suffered a lot of agony on account of protracted proceedings. He may have been reformed by now. No bad antecedents have been brought on record to establish that he is a habitual offender. In any case, after such a long time, it would not be in the fitness of things to send him back to the prison. He has already undergone about 13 days of the substantive sentence.

Keeping in view the aforesaid circumstances, this petition is dismissed and the sentence is modified to the extent that the petitioner is extended the benefit of probation under Section 4(1) of the Probation of Offenders Act, 1958 on his executing bond in the sum of Rs.5000/- with one surety, in the like amount to the satisfaction of the Trial Court for a period of one year within which period he will continue to be of good behaviour and keep peace and in case of breach of conditions of the bond, he will be ready to serve the sentence as and when called for. This modification shall be subject to deposit of Rs.40,000/- by the petitioner towards costs of the litigation, within three months from today, in addition to the fine amount, which is also converted into costs of litigation.

It is made clear that in case of failure to deposit the costs of litigation within the stipulated period, the petition shall be treated as having been dismissed without any modification.

March 10, 2009 (A.N.JINDAL)
`gian' JUDGE